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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Raquel-Shakira Arnold,

10 Plaintiff,

11 v.

12 Richmond American Homes of Arizona
13 Incorporated, et al.,

14 Defendants.

No. CV-25-00646-PHX-DJH

ORDER

15 On February 26, 2025, *pro se* Plaintiff Racquel-Shakira Arnold (“Plaintiff”) filed a
16 Complaint (Doc. 1) and Motion for an *ex parte* Temporary Restraining Order (“TRO”) (Doc. 3) against Richmond Homes of Arizona, Inc. and Fidelity National Title Agency Inc. (“Defendants”). Plaintiff asks the Court to reinstate title of her property back in her name. (Doc. 3). Plaintiff has filed an Affidavit of Irreparable Harm (Doc. 4) in support of her Motion for TRO. Plaintiff also seeks to proceed in this matter *in forma pauperis*. (Doc. 5).

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22 **I. Background**

23 Plaintiff claims she is a resident of Goodyear, Arizona and the resident and
24 rightful owner of a home located at 17527 West Lincoln Street. (Doc. 1 at ¶ 3). She
25 purports to have entered into a valid real estate deal with Defendants to buy the property
26 outright using two “certified negotiable instruments totaling \$669,995.00.” (*Id.* at ¶¶ 5–
27 6). After executing on these instruments, she alleges that Defendants instituted a Quiet
28 Title action against her in Maricopa County Superior Court, which she claims is

fraudulent. (*Id.* at ¶ 8). She states she was not provided notice to contest the Quiet Title Action that was finalized around “February/March.” (*Id.*) She also claims that Defendants were able to obtain a Writ of Restitution against her from the state court. (*Id.*) Her eviction from her home, she says, is imminent and she will suffer irreparable harm. (*Id.* at ¶ 11). Plaintiff alleges legal claims that include a Fourteenth Amendment Due Process violation, fraud and unjust enrichment, fraudulent court proceedings that resulted in a Writ of Restitution, fraudulent misrepresentation, and breach of financial obligations. (*Id.* at ¶¶ 12–15). She invokes the diversity jurisdiction of this Court since the Defendant Richmond American Homes of Arizona, Inc. is a corporation headquartered in Colorado and she herself is an Arizona resident. (*Id.* at ¶ 1). She provides no residency information with regard to Defendant Fidelity National Title Agency, Inc.¹ The Court will first address Plaintiff’s Application to Proceed *In Forma Pauperis* (“IFP”) and then move on to the merits of the Motion for TRO itself.

II. Plaintiff’s IFP Application

A. Legal Standard

Upon review of Plaintiff’s Application to Proceed *In Forma Pauperis* (“IFP”) application, the Court will grant her IFP status. (Doc. 5). When a party has been granted IFP status, the Court must review the complaint to determine whether the action:

- (i) is frivolous or malicious;
- (ii) fails to state a claim on which relief may be granted; or
- (iii) seeks monetary relief against a defendant who is immune from such relief.

See 28 U.S.C. § 1915(e)(2)(B).² In conducting this review, “section 1915(e) not only

¹ Plaintiff has not identified in her Complaint or her TRO motion what the citizenship of Defendant Fidelity National Title Agency is, as she is required to do under 28 U.S.C. § 1332 to establish diversity jurisdiction between herself and Defendants.

² “While much of § 1915 outlines how prisoners can file proceedings in forma pauperis, § 1915(e) applies to all in forma pauperis proceedings, not just those filed by prisoners.” *Long v. Maricopa Cmty. Coll. Dist.*, 2012 WL 588965, at *1 (D. Ariz. Feb. 22, 2012) (citing *Lopez v. Smith*, 203 F.3d 1122, 1126 n.7 (9th Cir. 2000) (“[S]ection 1915(e) applies to all in forma pauperis complaints[.]”); *see also Calhoun v. Stahl*, 254 F.3d 845 (9th Cir. 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”) (citation omitted). Therefore, section 1915 applies to this non-prisoner IFP Complaint.

1 permits but requires a district court to dismiss an [IFP] complaint that fails to state a
2 claim.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (citation omitted).

3 Federal Rule of Civil Procedure 8(a) requires complaints to make “a short and
4 plain statement of the claim showing that the pleader is entitled to relief.” While Rule 8
5 does not demand detailed factual allegations, “it demands more than an unadorned, ‘the
6 defendant-unlawfully-harmed-me’ accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
7 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
8 conclusory statements, do not suffice.” *Id.* A complaint “must contain sufficient factual
9 matter, accepted as true, to state a claim to relief that is plausible on its face.” *Id.*
10 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible
11 “when the plaintiff pleads factual content that allows the court to draw the reasonable
12 inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*,
13 550 U.S. at 556). A complaint that provides “labels and conclusions” or “a formulaic
14 recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S. at 555.
15 Nor will a complaint suffice if it presents nothing more than “naked assertions” without
16 “further factual enhancement.” *Id.* at 557.

17 The Court must accept all well-pleaded factual allegations as true and interpret the
18 facts in the light most favorable to the plaintiff. *Shwarz v. United States*, 234 F.3d 428,
19 435 (9th Cir. 2000). That rule does not apply, however, to legal conclusions. *Iqbal*, 556
20 U.S. at 678. The Court is mindful that it must “construe pro se filings liberally when
21 evaluating them under *Iqbal*.” *Jackson v. Barnes*, 749 F.3d 755, 763–64 (9th Cir. 2014)
22 (quoting *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010)).

23 **B. Screening of Plaintiff’s Complaint**

24 The Court will first screen Plaintiff’s Complaint under 28 U.S.C. § 1915(e)(2)
25 before moving on to the merits of its TRO petition. *See Rowell v. Dzurenda*, 2019 WL
26 5410059 (D. Nev. Sept. 27, 2019), report and recommendation adopted, 2019 WL
27 5395444 (D. Nev. Oct. 22, 2019), *aff’d and remanded*, 828 F. App’x 446 (9th Cir. 2020)
28 (screening a pro se plaintiff’s complaint under Section 1915 first before addressing his

1 TRO application).

2 **1. Fourteenth Amendment Due Process**

3 The Fourteenth Amendment prohibits any state from depriving a person of life,
 4 liberty, or property without due process of law. U.S. Const. amend. XIV, § 1. The
 5 guarantee of procedural due process under the Fourteenth Amendment applies only when
 6 a constitutionally protected liberty or property interest is at stake. *Bd. of Regents of State*
 7 *Colls. v. Roth*, 408 U.S. 564, 569 (1972); *Shinault v. Hawks*, 782 F.3d 1053, 1057 (9th
 8 Cir. 2015) (“Due process protections extend only to deprivations of protected interests.”).
 9 Interests protected by the Due Process Clause may arise from two sources—the clause
 10 itself and the laws of the states. *See Meachum v. Fano*, 427 U.S. 215, 223–27 (1976). To
 11 state a procedural due process claim, a plaintiff must allege: “(1) a liberty or property
 12 interest protected by the Constitution; (2) a deprivation of the interest by the government;
 13 [and] (3) lack of process.” *Wright v. Riveland*, 219 F.3d 905, 913 (9th Cir. 2000). The
 14 Fourteenth Amendment’s Due Process Clause cannot be asserted as the basis of a civil
 15 suit against a private corporation. *Wilson v. Amtrak Nat. R.R. Corp.*, 824 F. Supp. 55, 57
 16 (D. Md. 1992). Rather, it may extend only to actions against governmental agencies. *Id.*
 17 The Supreme Court in *District of Columbia v. Carter*, 409 U.S. 418 (1973), stated that
 18 the “commands of the Fourteenth Amendment are addressed only to the State or to those
 19 acting under color of its authority . . . The Fourteenth Amendment itself ‘erects no shield
 20 against merely private conduct, however discriminatory or wrongful.’ ” *District of*
 21 *Columbia v. Carter*, 409 U.S. 418 (1973) 423–424 (citing *Shelley v. Kraemer*, 334 U.S.
 22 1, 13 (1948)).

23 Here, Plaintiff alleges that two private corporations violated her Due Process
 24 rights under the Fourteenth Amendment. (Doc. 3 at 1–2). However, the Fourteenth
 25 Amendment does not allow Plaintiff to assert a due process violation against a party that
 26 is not a state actor. *District of Columbia*, 409 U.S. at 424. Plaintiff stated that
 27 Defendants were corporations in her Complaint and in her TRO and pleads nothing that
 28 would allow the Court to think otherwise. (Doc. 1 at ¶ 1; Doc. 3).

1 Because the auspices of the Fourteenth Amendment do not extend to violations by
 2 private actors, Plaintiff's Fourteenth Amendment claim must be denied. Because of this,
 3 the Court denies and will dismiss the Plaintiff's Fourteenth Amendment claim.

4 **2. Writ of Restitution**

5 Plaintiff also challenges a Writ of Restitution issued against her in state court.
 6 (Doc. 1 at 2). This claim is precluded by the *Rooker-Feldman* doctrine.

7 Under the *Rooker-Feldman* doctrine, federal district courts generally lack
 8 jurisdiction to review a final state court decision. *D.C. Court of Appeals v. Feldman*, 460
 9 U.S. 462 (1983); *Rooker v. Fidelity Tr. Co.*, 263 U.S. 413 (1923). The reasoning
 10 underlying this principle is that the United States Supreme Court is the only federal court
 11 with jurisdiction to hear direct appeals from a final state court judgment. *Noel v. Hall*,
 12 341 F.3d 1148, 1154 (9th Cir. 2003). Therefore, if a party is disappointed with a state
 13 court judgment, that party may not appeal to federal district court, even if the issue would
 14 be otherwise within federal district court jurisdiction based upon a federal question or
 15 diversity of citizenship. *Id.* at 1155. The doctrine applies to both final state court
 16 judgments and interlocutory orders. *See Doe & Assocs. Law Offices v. Napolitano*, 252
 17 F.3d 1026, 1030 (9th Cir. 2001). "The purpose of the doctrine is to protect state
 18 judgments from collateral federal attack." *Id.* The Supreme Court has explained that
 19 federal district courts are precluded from reviewing "cases brought by [1] state-court
 20 losers [2] complaining of injuries caused by state-court judgments [3] rendered before the
 21 district court proceedings commenced and [4] inviting district court review and rejection
 22 of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 291
 23 (2005). *Rooker-Feldman* does not bar jurisdiction where the federal court plaintiff is
 24 simply complaining of a "legal injury caused by an adverse party"; it instead bars
 25 jurisdiction if the federal plaintiff is complaining of "a legal injury caused by a state court
 26 judgment." *Noel*, 341 F.3d at 1163.

27 The Writ of Restitution issued against the Plaintiff functions, for the purposes of
 28 *Rooker-Feldman*, as a final state court judgment or at least as the result of a final state

1 court judgment. *See* Ariz. Rev. Stat. Ann. § 12-1178³. The wording of the statute that
 2 governs writs of restitution in Arizona makes clear that they can only be issued after the
 3 rendition of a judgment. (*Id.*) Because of this, the Court cannot sit in an appellate
 4 capacity and review the judgments of the state court. *Cullen v. Allstate Ins. Co.*, No.
 5 5:21-CV-5220, 2022 WL 126543, at *1 (W.D. Ark. Jan. 12, 2022) (finding that pro se
 6 Plaintiff should make use of the state court system to appeal state court decisions);
 7 *Henrichs v. Valley View Dev.*, 474 F.3d 609, 616 (9th Cir. 2007) (holding that the
 8 *Rooker–Feldman* doctrine barred the plaintiff's claim because the alleged legal injuries
 9 arose from the “state court's purportedly erroneous judgment” and the relief he sought
 10 “would require the district court to determine that the state court's decision was wrong
 11 and thus void”); *see also District of Columbia Court of Appeals*, 460 U.S. at 476 (stating
 12 that a federal district court may not entertain a direct or collateral attack on state court
 13 civil judgements). If the Plaintiff wishes to appeal a state court judgment, she must do
 14 so through the state courts. Anything else would be considered an attack by this Court on
 15 state court proceedings. Because of this, the Court will not address the merits of
 16 Plaintiff’s Writ of Restitution argument.

17 **3. Fraudulent Misrepresentation and Breach of Financial Obligations**

18 Plaintiff also claims that Defendant engaged in fraudulent misrepresentation and
 19 breach of financial obligations. (Doc. 1 at 2).

20 To prevail on a claim of fraud and fraudulent practices, Plaintiff is subject to the
 21 heightened pleading standards of Federal Rule of Civil Procedure 9(b). Fed. R. Civ. P.
 22 9(b). Plaintiff must set forth specific facts alleging fraud with particularity to survive a
 23 motion to dismiss. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1104–05 (9th Cir.
 24 2003). “To satisfy Rule 9(b), a pleading must identify ‘the who, what, when, where, and
 25 how of the misconduct charged,’ as well as ‘what is false or misleading about [the

26 ³ Ariz. Rev. Stat. Ann. § 12-1178(C) states that “No writ of restitution shall issue until the
 27 expiration of five calendar days after the rendition of judgment. The writ of restitution
 28 shall be enforced as promptly and expeditiously as possible. The issuance or
 enforcement of a writ of restitution shall not be suspended, delayed or otherwise affected
 by the filing of a motion to set aside or vacate the judgment or similar motion unless a
 judge finds good cause.”

purportedly fraudulent] statement, and why it is false.’ ” *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011) (quoting *Ebeid ex rel. United States v. Lungwitz*, 616 F.3d 993, 998 (9th Cir.2010) (internal quotation marks and citations omitted).

While Plaintiff claims fraud, she does not adequately plead it. Plaintiff does not explain how Defendant engaged in fraud or fraudulent practices and/or breach of financial obligations. She attaches four things as exhibits in her Complaint: (1) a signed contract between the parties; (2) a deposit receipt; (3) a payment receipt; and a (4) special warranty deed. (Doc. 1 at 4). If anything, these documents only show that Plaintiff contracted with Defendants to purchase a home. Plaintiff does not make clear how, when, and where the Defendants committed fraud or engaged in fraudulent practices. *See Cafasso, U.S. ex rel.*, 637 F. 3d at 1055. The Court cannot ascertain any fraud on the part of Defendants because Plaintiff has failed to adequately plead fraud under Federal Rule of Civil Procedure 9(b). The Court will dismiss this claim.

III. Plaintiff’s Motion for TRO

A. Legal Standards for TROs

A TRO preserves the status quo pending a hearing on a preliminary injunction motion in order to avoid irreparable harm in the interim. *See Ariz. Recovery Housing Ass’n v. Ariz. Dep’t of Health Servs.*, 2020 WL 8996590, at *1 (D. Ariz. May 14, 2020); *Bronco Wine Co. v. U.S. Dept. of Treasury*, 997 F. Supp. 1309, 1313 (E.D. Cal. 1996). The standards governing temporary restraining orders and preliminary injunctions are “substantially identical.” *Washington v. Trump*, 847 F.3d 1151, 1159 n.3 (9th Cir. 2017) (citation omitted). Preliminary injunctive relief is an “extraordinary remedy never awarded as of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008).

An *ex parte* TRO may be granted without notice to the adverse party only if:

- (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to

1 give the notice and the reasons supporting the claim that
2 notice should not be required.

3 Fed. R. Civ. P. 65(b). To obtain a preliminary injunction, a plaintiff must show: (1) a
4 likelihood of success on the merits, (2) a likelihood of irreparable harm if injunctive relief
5 were denied, (3) that the equities weigh in the Plaintiff's favor, and (4) that the public
6 interest favors injunctive relief. *Winter*, 555 U.S. at 20. The movant carries the burden
7 of proof on each element of the test. *See Los Angeles Memorial Coliseum Comm'n v.*
8 *National Football League*, 634 F.2d 1197, 1203 (9th Cir. 1980).

9 **B. Plaintiff's Motion for TRO**

10 Because Plaintiff asserts no cognizable claims that can get survive Rule 8 pleading
11 standards, Plaintiff cannot show a likelihood of success on the merits and her TRO
12 request will also be denied. *See* 28 U.S.C. § 1915(e)(2)(B); *See Alliance for the Wild*
13 *Rockies v. Cottrell*, 632 F.3d 1127, 1132-35 (9th Cir. 2011) (explaining that although the
14 four *Winter* factors use a flexible sliding scale approach, "serious questions going to the
15 merits," warrant against the granting of a TRO).⁴

16 As discussed above, Plaintiff's Due Process claim fails because none of the claims
17 are being brought against a state actor. *See District of Columbia*, 409 U.S. at 424. Her
18 challenge to the state-issued Writ of Restitution at issue will also not succeed because this
19 Court is not the proper avenue to appeal a state court judgment, or a subsequent writ
20 (relief which is typically issued after a final judgment on the merits of a dispute). *See*
21 *Ariz. Rev. Stat. Ann. § 12-1178*. Lastly, the fraud allegations do not survive because

22 ⁴ Plaintiff also cannot show why an *ex parte* TRO should be granted. While a TRO is
23 never granted as a matter of right generally, an *ex parte* TRO is an even more
24 extraordinary remedy. *First Technology Safety Systems, Inc. v. Depinet*, 11 F.3d 641,
25 650 (6th Cir.1993) (citing *Granny Goose Foods, Inc. v. Brotherhood of Teamsters and*
26 *Auto Truck Drivers Local No. 70 of Alameda County*, 415 U.S. 423 (1974). For a TRO to
27 be issued *ex parte*, Plaintiff must show why notice should not be provided to the other
28 party. *See e.g. Comcast of Illinois X, LLC v. Till*, 293 F.Supp.2d 936, 938-39 (E.D. Wisc.
2003); *Best Deals on TV, Inc. v. Naveed*, 2007 WL 902564, *4 (N.D. Cal. 2007) (holding
that plaintiff could not show the need for a temporary restraining order without notice
when plaintiff waited months after learning of the situation to file the request). Plaintiff
has not shown why the adverse party, Defendants in this case, were not notified. Plaintiff
admits in the Complaint that Defendants were able to reclaim title to the property in
February/March of 2024. (Doc. 1 at ¶ 8). This gave Plaintiff plenty of time to notify
Defendants of this action.

1 they were not pled according to the heightened pleading standards required under Federal
 2 Rule of Civil procedure 9(b). *See* Fed. R. Civ. P. 9(b). Due to the foregoing, Plaintiff's
 3 TRO will be denied.

4 **IV. Leave to Amend**

5 Where a district court grants a motion to dismiss, it should generally provide leave
 6 to amend unless it is clear that the complaint could not be saved by any amendment. *See*
 7 Fed. R. Civ. P. 15(a); *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031
 8 (9th Cir. 2008). The Court "may exercise its discretion to deny leave to amend due to
 9 'undue delay, bad faith or dilatory motive on [the] part of the movant, repeated failure to
 10 cure deficiencies by amendments previously allowed undue prejudice to the opposing
 11 party . . . [and] futility of amendment.'" *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d
 12 876, 892–93 (9th Cir. 2010) (quoting *Foman v. Davis*, 371 U.S. 178, 182, (1962)). Leave
 13 to amend may be denied when "the court determines that the allegation of other facts
 14 consistent with the challenged pleading could not possibly cure the deficiency."
 15 *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986).
 16 In sum, leave to amend "is properly denied [where] amendment would be futile."
 17 *Carrico v. City and Cty. of San Francisco*, 656 F.3d 1002, 1008 (9th Cir. 2011).

18 Here, the Court finds no reason to believe that the Complaint can be cured of its
 19 defects. The proper remedy for Plaintiff is an appeal to the state court of appeals. The
 20 Plaintiff cannot correct her Fourteenth Amendment Due Process claim because no state
 21 actor is involved. She cannot cure her other claims either because she properly belongs
 22 in the state court system. Bringing an amended complaint to this Court would risk futility
 23 and therefore, leave to amend is denied.


24 Accordingly,

25 **IT IS ORDERED** that Plaintiff's Application to Proceed *In Forma Pauperis*
 26 (Doc. 5) is **granted** and her Complaint is **dismissed, with prejudice**.

27 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Temporary Restraining
 28 Order (Doc. 3) is **denied**.

1 **IT IS FINALLY ORDERED** directing the Clerk of Court to enter judgment and
2 terminate this matter.

3 Dated this 27th day of February 2025.

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6 Honorable Diane J. Humetewa
7 United States District Judge
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